ing commends itself to our approval. *Carpenter* vs. *The Providence Washington Insurance Company*, 16 Peters, 495, maintains the same views which were expressed by the Court of Appeals of New York. Enough has, however, been said to show that in our opinion, the defendants are not liable either to Roberts or to his assignee, upon this policy, the conditions upon which their obligation to pay rests, not having been fully fulfilled by the assured.

The judgment is reversed and a *venire de novo* awarded.

In the Supreme Court of Pennsylvania, January 13, 1859.

[Before Lowrie, C. J. and Woodward, Strong, and Read, JJ.]

THE WESTERN INSURANCE COMPANY *vs.* CROPPER.

Where, in a policy of insurance, the excepting clause was in these words—"it is understood that this company is not liable for any breakage or derangement of the engine, or bursting of the boiler, or any of the parts thereof, or for the effects of fire connected with the operation of, or the repairs of the engine or boiler, unless the damage be occasioned and the repairs rendered necesssary by the stranding or sinking of the vessel, after her engines and boilers shall have been put in successful operation"—it was held, that the purpose of the exception was only to relieve the underwriters from liability to indemnify the assured for broken or deranged machinery, and not to exempt them from the obligations to pay for a total loss, even though that loss could be traeed back to the breakage of the machinery.

The opinion of the court, in which the facts appear, was delivered by

STRONG, J.—The inquiry raised by the pleadings, relates to the question of the exception inserted in the policy. It is entirely a question of construction. The contract was one of insurance upon the hull, tackle, machinery and apparel of a steam propeller, but it stipulates for exemption from liability for certain losses. The stipulation was inserted by the underwriters, and was intended for their benefit. If it is obscure, it is their fault. If it be capable of two interpretations equally reasonable, that must be adopted which is most favorable to the assured, for the language is that of the insurers.

The excepting clause in the policy is in the following words: "It is understood that this company is not liable for any breakage or derangement of the engine, or bursting of the boiler or any of the parts thereof, or for the effects of fire from any cause connected

with the operation of or the repairs of the engine or boiler, unless the damage be occasioned and the repairs rendered necessary by the stranding or sinking of the vessel, after her engines and boilers shall have been put in successful operation. It is also understood that this company is not liable for fuel, wages and provisions, nor for any expenses of any delay consequent upon repairs to the engine or boiler of any kind, or repairs to the hull, if such repairs are rendered necessary by breakage or derangement of machinery or bursting of boiler."

It is not to be denied that the intention of the parties is far from being clearly expressed in this excepting clause. The controversy is, however, all in regard to the first exception, and we are of opinion that its purpose was only to relieve the underwriters from liability to indemnify the assured for broken or deranged machinery, and not to exempt them from the obligation to pay for a total loss, even though that loss could be traced back to the breakage of the machinery as its first cause. The exemption embraces three kinds of losses. First, breakage or derangement of the engine, or bursting of the boiler, or any part thereof; second, the effects of fire arising from certain causes; and third, fuel, wages and provisions, and expenses of delay consequent upon repairs to the engine, boiler or hull, if rendered necessary by breakage of the machinery. If it was the intention of the parties, by the first exemption, to except from the contract of indemnity all loss directly consequent upon breakage, it would have been easy to have done so clearly by the insertion of two or three additional words. That the difference between damage itself and loss, as well as causing one, and the loss caused, was in the minds of the insurers, may be inferred from the fact that by the second exemption, they have protected themselves against such consequential loss. They expressly provide against liability "for the effects of fire from any cause connected with the operation of or the repairs of an engine and boiler," but they expressly exclude effects of breakage, or derangement of the engine, or bursting of the boiler, or any part thereof. The difference in the mode of expression is indicative of a difference of intention.

It is difficult, also, to account for the additional stipulation contained in the third exception, if the first was designed to embrace the

consequences of breaking of the machinery. In that case, expenses of delay consequent upon repairs to the engine or boiler, or repairs to the hull, rendered necessary by breakage or derangement of the machinery, are twice excluded from the second. These things are but consequences of breakage. Why stipulate the second time for their exception, if they had already been excepted? No satisfactory reason has been given for it. Parties are not to be presumed to have intended mere repetition. It seems clear that something additional was meant, which had not before been excepted. To allow any force to the first part of the exempting clause, the first must be construed as extending only to immediate damage to the machinery. And it is a cardinal rule of construction that effect should be given, if possible, to every part of the instrument. The general provisions of the policy cover the whole loss, however occasioned. The underwriters limit the general words by stipulating that they are not liable for breakage, nor for expenses of delay, caused by breakage, or by repairs consequent upon breakage. The exception itself raises an implication, that for all other consequences of breakage not mentioned, they were to remain responsible under their general covenant of insurance. This interpretation is consistent with all the provisions of the policy, and leaves no part of it without meaning.

Judgment affirmed.

RECENT ENGLISH CASES.

Judicial Committee of the Privy Counsel.

GILMOUR *vs.* SUPPLE.

S. had a raft which had been measured by an official person as of 71,443 feet, and putting this measurement in G's hands, agreed as follows: "Sold to G. a raft, the quantity about 71,000 feet, to be delivered at the I. booms, price 7¾d. per foot." S. conveyed the raft to the I. booms, giving notice thereof to G's servants, who helped to fasten it there. A storm having arisen and destroyed the raft: Held, affirming the judgment of the court of error, Upper Canada, that there was evidence for the jury of delivery, and they having found the fact of delivery, the risk fell on G., for the contract did not imply that anything more was to be done by S. on his own or on G's behalf, or in which both were to concur before the property passed.